

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-795

February 17, 1999

BANGOR GAS COMPANY, L.L.C.,
Petition for Approval to
Provide Gas Service in the
Greater Bangor Area

SUPPLEMENTAL ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We authorize Bangor Gas Company, L.L.C. (Bangor Gas) to enter into special contracts with customers with no prior Commission approval, subject to the same filing requirements we outlined for CMP Natural Gas Company (CMP Natural Gas).

II. PROCEDURAL HISTORY

In its initial filings in this proceeding, Bangor Gas proposed to be allowed to enter special contracts without prior Commission approval as one component of its rate plan. In our Order Approving Rate Plan dated June 26, 1998, we approved Bangor Gas's proposed rate plan but did not directly address the question of whether Bangor Gas needed prior Commission approval of any special contracts.

On December 17, 1998, in Docket No. 96-786, the Commission explicitly allowed CMP Natural Gas Company authority to enter into special contracts and established particular filing requirements. See Central Maine Power Company, Petition for Approval to Furnish Gas Service in and to Areas Not Currently Receiving Natural Gas Service, Docket No. 96-786, Order Approving Rate Plan (Dec. 17, 1998) (CMP Natural Gas Order).

On January 26, 1999, Bangor Gas filed a Motion for Clarification on the matter of Commission approval of special contracts. In its motion, Bangor Gas requested that the Commission issue a supplemental order authorizing the same special contract treatment for it as was accorded to CMP Natural Gas.

On February 8, 1999, CMP Natural Gas filed a letter objecting to approval of Bangor Gas's request to be allowed to enter special contracts until it files rate schedules and terms and conditions of service. On February 10, 1999, Bangor Gas filed a response strongly disagreeing with CMP Natural Gas's premise.

We deliberated this matter on February 16, 1999.

III. ANALYSIS

Bangor Gas points out that it originally proposed, as part of its rate plan, to have the flexibility to enter into contractual arrangements with customers to provide service at non-tariffed rates. In the prefiled testimony of Messrs. Lee and Van Lierop, Bangor Gas argued that this flexibility was necessary to enhance its competitiveness, benefitting all ratepayers.

At that time, a bill was pending before the Legislature to allow the Commission to authorize gas utilities to "enter into contracts for the sale of gas, transmission and distribution services and related management services with limited or no prior approval." L.D. 2094 (118th Legis. 1998). The bill was signed into law on April 3, 1998 and is now codified as 35-A M.R.S.A. §4706 (5)(B).

In addition, Bangor Gas notes that in Docket No. 96-786, the Commission stated that contracting and pricing flexibility is permissible in circumstances where the entrepreneurial risk of the start-up venture is on shareholders. See CMP Natural Gas Order at 12.

Bangor Gas requests that the Commission allow it to enter into special rate contracts with customers with no prior Commission approval. Bangor Gas proposes to comply with the informational filing terms established by the Commission in the CMP Natural Gas Order. See CMP Natural Gas Order at 12-13. Specifically, Bangor Gas would file copies of any special contracts with the Commission along with the Company's explanation of its view of the relationship of contract price to short-run marginal cost.

CMP Natural Gas urges us not to approve Bangor Gas's request until Bangor Gas also files complete rate schedules, arguing that

the ability to enter into special contracts may not be conferred apart from review of rate schedules. Bangor Gas strongly disagrees with CMP Natural Gas's argument, noting that the submission of rate schedules is a separate matter from the authority to enter special rate contracts. Moreover, Bangor Gas notes that its rate plan has already been approved in its general form.

We agree with Bangor Gas. We previously approved Bangor Gas's proposed rate plan. While our order did not explicitly discuss the issue of special rate contracts, Bangor Gas's the authority to enter into special rate contracts to facilitate its ability in the marketplace. Bangor Gas now seeks clarification of the specific terms of its authority to enter special contracts and proposes that those terms match those we have allowed CMP Natural Gas.

CMP Natural Gas's argument that it is premature to allow Bangor Gas to enter into special contracts absent filed rate schedules is not persuasive for several reasons. First, we do not find that it is necessary to have filed rate schedules before approving special contract authority for Bangor Gas. We have approved the broad outline of its rate plan which is premised on allowing the utility to engage in its own entrepreneurial decision making, pricing flexibility, and shareholder risk. Moreover, even if established rates were an important pre-condition for this authority, we are satisfied that that threshold is satisfied since Bangor Gas's approved rate plan included specific rates, rate indexing formulas, and customer charges for residential, commercial and industrial customers. Thus, as a practical matter, Bangor Gas's rates are known.

Second, as Bangor Gas notes in its February 10th letter, there is no apparent reason to hold Bangor Gas's authority to enter into special contracts hostage to regulatory filing requirements and doing so would unnecessarily and unreasonably tip the competitive balance in CMP Natural Gas's favor during the interim period. We strive to conduct our regulatory oversight in a manner which does not unbalance the competitive "playing field."

Consequently, consistent with the policy established in Docket No. 96-786, we allow Bangor Gas to enter into special rate contracts with customers with no prior approval, subject to the informational filing conditions established in the CMP Natural Gas Order. Operating under its approved 10-year price cap plan,

Bangor Gas's shareholders will bear the entrepreneurial risks of the gas utility start-up venture.

As with CMP Natural Gas, issues regarding management's prudence in entering any such contracts, as well as associated issues relating to recovery of revenue shortfalls or allowed return, are reserved for later review as warranted.

Accordingly, we

O R D E R

1. That Bangor Gas Company, L.L.C. may enter into special contracts with its customers for gas supply, distribution and transportation and related managerial services without prior approval; and

2. That Bangor Gas Company, L.L.C. shall file copies of all executed special customer contracts with the Commission as they are entered into along with an explanation of the Company's view of the relationship of the contract price to the Company's short-run marginal costs.

Dated at Augusta, Maine this 17th day of February, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.